



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1997

Mr. J. Robert Giddings
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR97-2561

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110276.

The University of Texas at El Paso (the "university") received a request for "copies of any electronic mail sent to or by Dr. Elizabeth Anthony, Dr. Kathleen Marsaglia, Dr. David Hall, or Dr. Barthy Bird in the previous four years." You assert that the requested information is excepted from required public disclosure based on section 552.103 of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

In this instance, you have made the requisite showing that the requested information relates to litigation pending in the case of *Dr. Kathleen M. Marsaglia v. The University of Texas at El Paso*, No. 96-2914 (County Court at Law No. 4, El Paso County, Tex.). The requested records may be withheld from the requestor based on section 552.103 of the Government Code.¹

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 110276

cc: Mr. Tom Wicker, Jr.
Kemp, Smith, Duncan & Hammond, P.C.
P.O. Box 2800
El Paso, Texas 79999-2800

¹If the opposing party in the litigation has seen or had access to any of the requested information, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).